

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION**

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**MDL No. 2419**

**Dkt. No. 1:13-md-2419 (RWZ)**

**THIS DOCUMENT RELATES TO:**

**All Cases Against the Saint Thomas  
Defendants**

**MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL SUMMARY JUDGMENT  
REGARDING CERTAIN COMPARATIVE FAULT DEFENSES**

Plaintiffs' Steering Committee, pursuant to the Court's April 25, 2015 Order (Dkt. 2827), moves this Honorable Court for leave to file a Motion for Partial Summary Judgment Regarding Certain Comparative Fault Defenses.

As grounds for this motion, the Plaintiffs' Steering Committee respectfully states as follows:

1. In Answers to the Master Complaint, the Saint Thomas Defendants<sup>1</sup> allege the affirmative defense of comparative fault against certain entities and persons.<sup>2</sup> Specifically, the Saint Thomas Defendants want to assign percentages of fault to the following entities:

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<sup>1</sup> The Saint Thomas Defendants include the following entities and individuals: the Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, A Professional Corporation, John. Culclasure, MD, Debra V. Schamberg, RN, Vaughan Allen, MD, Saint Thomas West Hospital f/k/a Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health.

<sup>2</sup> Doc. 1455 - Answer Of Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, A Professional Corporation, John W. Culclasure, MD, and Debra V. Schamberg, RN, pp. 79 – 102;

Doc. 1456 - Answer of Specialty Surgery Center, Crossville, PLLC, Kenneth R. Lister, MD and Kenneth Lister, MD, PC, pp. 77 – 100; and

Doc. 1464 – Saint Thomas Entities Master Answer and Affirmative Defenses to Plaintiffs' Amended Master Complaint, pp. 101 – 117.

- a. Scientific Air Analysis, Inc.;
- b. Pharmacy Support, Inc.;
- c. Professional Compounding Centers of America;
- d. Medisca;
- e. GDC Properties Management, LLC Inc.

2. These comparative fault defenses allege that the above identified comparative fault parties played some role in the 2012 fungal meningitis catastrophe.

3. Based upon the record compiled to date, there is no proof that these entities committed any negligence that resulted in any injury to a particular plaintiff. There is certainly no proof in the record that these entities caused such injuries.

4. If summary judgment is granted, then the trial of these cases will be significantly reduced. As it stands now, the Saint Thomas Defendants will likely spend multiple days at trial preparing a case against the above-identified comparative fault non-parties in the hopes that the jury would reduce the Saint Thomas Defendants' liability. The Court should, prior to trial, decide whether under such a record there is sufficient evidence to submit these defenses to the jury.

5. Moreover, this Court should grant leave to the Plaintiffs' Steering Committee to file such a Motion because this Court will not be able to prepare verdict forms for use at trial until the subject issue is adjudicated. In other words, the subject issue must be decided prior to trial.

Respectfully Submitted This 18<sup>th</sup> Day of May, 2016.

**/s/ J. Gerard Stranch, IV**

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*Plaintiffs' Steering Committee*

#### **CERTIFICATE OF SERVICE**

I, J. Gerard Stranch, IV, hereby certify that on May 18, 2016, I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

/s/ J. Gerard Stranch, IV  
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